

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

) MDL No. 1456

THIS DOCUMENT RELATES TO
01-CV-12257-PBS AND 01-CV-339

) Civil Action No. 01-CV-12257 PBS

) Judge Patti B. Saris

) Chief Magistrate Judge Marianne B. Bowler

**BRISTOL-MYERS SQUIBB COMPANY'S AND ONCOLOGY THERAPEUTICS
NETWORK CORPORATION'S MOTION FOR SUMMARY JUDGMENT AS TO CLASS 3**

Pursuant to Fed. R. Civ. P. 56(b), Defendants Bristol-Myers Squibb Company and Oncology Therapeutics Network Corporation (collectively the "BMS Defendants") respectfully move this Court for summary judgment on all claims against them in the Third Amended Master Consolidated Complaint asserted by or on behalf of Class 3, as certified by the Court in its Order dated January 30, 2006. The grounds for this motion are set forth in the BMS Defendants' Memorandum Of Law In Support Of Their Motion For Summary Judgment As To Class 3, dated July 14, 2006 and the Affidavit of Denise M. Kaszuba, sworn to on July 13, 2006, together with the Local Rule 56.1 Statement of BMS Defendants, dated March 15, 2006, BMS Defendants' Memorandum Of Law In Support Of Their Motion For Summary Judgment dated, March 15, 2006; the BMS Defendants' Memorandum Of Law In Opposition To Plaintiffs Motion For Partial Summary Judgment, dated April 7, 2006; the BMS Defendants' Reply Memorandum Of Law In Support Of Their Motion For Summary Judgment, dated April 28, 2006; the Affidavit of Denise M. Kaszuba, sworn to February 18, 2004; the Declaration of Zoltan Szabo, dated October

25, 2004; the Declaration of Steven M. Edwards, dated March 15, 2006; the Expert Declaration of Dr. Gregory K. Bell, dated March 15, 2006; and the Declaration of Lyndon M. Tretter dated, April 6, 2006.

WHEREFORE, for the reasons set forth in the memoranda, LR 56.1 Statement, declarations and affidavits described above, BMS respectfully requests that the Court grant it summary judgment on all claims against them in the Third Amended Master Consolidated Complaint asserted by or on behalf of Class 3, as certified by the Court in its Order dated January 30, 2006 and enter an order:

- a. granting summary judgment on all claims against them in the Third Amended Master Consolidated Complaint asserted by or on behalf of Class 3, as certified by the Court in its Order dated January 30, 2006; and
- b. providing such other and further relief as the Court deems just and proper.

REQUEST FOR ORAL ARGUMENT

Pursuant to LR. 7.1, Schering and Warrick respectfully request that oral argument be heard on this motion.

Dated: Boston, Massachusetts
July 14, 2006

Respectfully Submitted,

By: /s/ Jacob T. Elberg (BBO No. 657469)

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CERTIFICATE OF SERVICE

I, Lyndon Tretter, certify that on July 14, 2006 a true and correct copy of the forgoing document was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Lyndon M. Tretter

Lyndon Tretter